

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

MATHEW TIMOTHY SCULLY,

Case No. 22-CV-0397 (WMW/JFD)

Plaintiff,

v.

MINNESOTA DEPARTMENT OF
CORRECTIONS; PAUL SCHNELL;
JAMIE DOEDEN; and DCO
BLANCHARD,

**REPORT AND
RECOMMENDATION**

Defendants.

In an Order dated February 14, 2022, this Court ordered Plaintiff Mathew Timothy Scully to pay an initial partial filing fee of at least \$58.04. (*See* Feb. 14 Order at 4, Dkt. No. 3.) The Court gave Mr. Scully 21 days—that is, until March 7, 2022—to make this payment, and cautioned Plaintiff that if he failed to comply with the Court’s Order, the Court would recommend that this action be dismissed without prejudice for failure to prosecute. (*See id.*; *see also* Fed. R. Civ. P. 41(b).)

That deadline has now passed, and Mr. Scully has not paid the initial partial filing fee. Therefore, this Court now recommends, in accordance with its prior Order, that this action be dismissed without prejudice under Federal Rule of Civil Procedure 41(b) for failure to prosecute. *See, e.g., Henderson v. Renaissance Grand Hotel*, 267 F. App’x 496, 497 (8th Cir. 2008) (per curiam) (“A district court has discretion to dismiss an action under Rule 41(b) for a plaintiff’s failure to prosecute, or to comply with the Federal Rules of

Civil Procedure or any court order.”). Given this recommendation, the Court further recommends that Mr. Scully’s application to proceed *in forma pauperis* (Dkt. No. 2) and motion for counsel (Dkt. No. 4) both be denied as moot.

Based upon the foregoing, and on all of the files, records, and proceedings herein,

IT IS HEREBY RECOMMENDED that:

1. This action be **DISMISSED WITHOUT PREJUDICE** under Federal Rule of Civil Procedure 41(b) for failure to prosecute;
2. Plaintiff Mathew Timothy Scully’s application to proceed *in forma pauperis* (Dkt. No. 2) and motion for counsel (Dkt. No. 4) be **DENIED** as moot; and
3. Judgment be entered accordingly.

Dated: March 21, 2022

s/ John F. Docherty
JOHN F. DOCHERTY
United States Magistrate Judge

NOTICE

Filing Objections: This Report and Recommendation is not an order or judgment of the District Court and is therefore not appealable directly to the Eighth Circuit Court of Appeals. Under Local Rule 72.2(b)(1), “a party may file and serve specific written objections to a magistrate judge’s proposed finding and recommendations within 14 days after being served a copy” of the Report and Recommendation. A party may respond to those objections within 14 days after being served a copy of the objections. See Local Rule 72.2(b)(2). All objections and responses must comply with the word or line limits set forth in Local Rule 72.2(c).